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La Gazette de L' État de Poudouchéry

The Gazette of Puducherry

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பொருளடக்கம் SOMMAIRES CONTENTS

GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(*G.O. Rt. No. 85/AIL/Lab./T/2020, Puducherry, dated 16th July 2020)*

NOTIFICATION

Whereas, an Award in I.D. (T) No. 01/2018, dated 19-02-2020 of the Industrial Tribunal, Puducherry, in respect of the Industrial Dispute between the management of Puducherry Road Transport Corporation Ltd., Puducherry and PRTC Uzhiyargal Sangam, Puducherry, over abolition of contract system of employment for running staff of the bus and conversion as daily waged employees has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-05-1991, it is hereby directed by the Secretary to Government (Labour) that the said Award shall be published in the Official Gazette, Puducherry.

(By order)

S. MOUTTOULINGAM,
Under Secretary to Government (Labour).

———

BEFORE THE INDUSTRIAL TRIBUNAL AT PUDUCHERRY

Present: Thiru V. PANDIARAJ, B.SC., LL.M.,
Presiding Officer.

Wednesday, the 19th day of February 2020.

I.D. (T) No. 01/2018

The Secretary,
PRTC Uzhiyargal Sangam,
No.24, Thiru. Vi. Ka. Nagar,
Mudaliarpet, Puducherry. . . Petitioner

Versus

The Managing Director,
Puducherry Road Transport
Corporation Limited (PRTC),
No.4, Ayyanar Koil Street,
Raja Nagar, (Behind New Bus Stand),
Puducherry. . . Respondent

This industrial dispute coming on 12-02-2020 before me for final hearing in the presence of Thiru P. Sankaran, Counsel for the petitioner and Thiru B. Mohandass, Counsel for the respondent, up on hearing, up on perusing the case records, after having stood over for consideration till this day, this Court passed the following:

AWARD

1. This Industrial Dispute has been referred by the Government of Puducherry as per the G.O. Rt. No. l83/ AIL/Lab./T/2017, dated 29-11-2017 for adjudicating the following:-

(a) Whether the dispute raised by PRTC Uzhiyargal Sangam, Puducherry, against the management of M/s. Puducherry Road Transport Corporation Ltd., Puducherry, over abolition of contract system of employment for running staff of the bus and their conversion as daily waged employees is justified or not? If justified, what is the relief entitled to?

(b) To compute the relief if any, awarded in terms of money if, it can be so computed?

2. *The brief averment of the petition filed by the petitioner:-*

The petitioners in the industrial dispute are the drivers and conductors and they are the members of the PRTC Uzhiyargal Sangam and they filed this claim petition through the Secretary of PRTC Uzhiyargal Sangam. The petitioners/members have educational and technical qualification to employs them as driver and conductors. This petitioner Union represents this case for 71 drivers and 114 conductors who were employed as first batch on 18-09-2015 and 83 drivers and 38 conductors who were employed as second batch on 19-10-2015. They were appointed by the respondent in violation of the rules and regulations of recruitment as drivers and conductors in the disguise of contract employment by entering into an one to one agreement between the respondent and the Union workmen, instead of appointing them as daily rated employees, who are eligible for regularization under the existing the recruitment rules. The respondent has appointed them in violation of recruitment rules, despite they are having full qualification, the duties and responsibilities for the workman are the same. The petitioner Union has submitted a letter to the respondent *vide* Letter No. PRTCEU/19/2016, dated 27-07-2016 with a request to convert them as daily rated wages employees immediately with appropriate rates of Government wages to enable their eventual absorption as per notified Recruitment Rules of the respondent, which provide for absorption of daily rated wages staff and those on contract and to ensure conformity of job without any willful, interruption with a motive of depriving continuity of service. But, the respondent did not give any reply to the same. In the mean time,

the respondent attempted to have a move to terminate the regularly recruited drivers and conductors to make fresh appointments. This petitioner Union filed their protest *vide* Letter No. PRTCEU/07/2017, dated 16-02-2017, wherein, it has requested the respondent to consider their request of conversion as daily rated wages staffs and regularization on completion of 3 years of service as per the approved recruitment rules. But, the respondent did not response to it. Thereafter, this petitioner Union approached the Conciliation Officer and raised the industrial dispute on 13-03-2017 as per the decision taken on 11-02-2017 in the General Body Meeting. The conciliation also ended in failure. The respondent corporation which is the public sector undertaking of Government supposed to act as an example as a model employer in adopting and implementing the laws, rules and regulations already established and practiced by the corporation. The respondent corporation engaged in violation of established laws and practices, by inventing a novel method of recruitment and thereby adopted unfair labour practice and committed injustice to these petitioners especially by entering into one to one contract employment. Further, it has violated the provisions of Minimum Wages Act, ESI, EPF and the provisions of Insurance Act. It has also indulged in Violation of Contract Labour (Regulation and Abolition) Act, 1948 and the Motor Transport Workers Act, 1961. The recruitment of running staff of petitioner Union on contract basis is illegal and unjust and they are entitle for conversion as daily rated employees as per the existing Recruitment Rules and they have to be regularized accordingly. The petitioner Union prayed to give direction to the respondent to convert the existing members of the petitioner Union as daily rated employees with effect from the date of appoint on the current scale of pay with back wages, continuity of service and all other attendant benefits and hence, it seeks to allow this claim statement.

3. *The brief averment of the counter filed by the respondent:-*

(i) The respondent denied all the averments except those are specifically admitted. The respondent has not violated the existing Recruitment Rules for the appointment of post of drivers and conductors. The respondent admitted, the representation made by the petitioner Union on 27-07-2016, demanding immediate conversion of the petitioner Union workman into daily rated wages employees. Though the respondent management did not give reply in writing, it has clearly pointed out to the Union representatives, about its inability to accept the claim in accordance with law. The respondent corporation never attempted to terminate the regularly recruited drivers and conductors and never tried to make any fresh appointment. Even then, it has received the representation made by the Union, dated 16-02-2017, though it was given without any justification. Furthermore, the respondent management pointed out it very categorically, to the Union representatives, about its unjustifiability and it has brought out the very same reply given to the petitioner. The respondent corporation has filed its reply to the Conciliation Officer on 05-06-2017 wherein, it has clearly stated that the drivers and conductors were appointed on contract basis for 11 months on consolidated wages and it has denied that there is no truth that the drivers and conductors are doing work of a regular employee, in the corporation. It has explained the break given to the drivers and conductors, as it is the part of routine procedure and it has explained that it is provided in their contract of employment itself. As per the recruitment rules daily rated wages employees alone can be observed as regular employees. It has clearly stated that the contract drivers and conductors cannot claim anything more than that of the terms of contract. It has further stated the contract drivers and conductors are governed by the terms and conditions of their contract of employment and there is no provision for continuing them as daily rated wages employees by way of conversion. Furthermore, it has explained the severe financial crisis at that time and it has explained the difficulty in payment of wages to the regular staffs. Furthermore, the respondent has given its reply on 15-09-2017 to the rejoinder statement submitted by the petitioner Union on 19-06-2017. It has denied the allegation of exploitation of labour, under the contract system, introduced by the management. Furthermore, there is no legal right for a daily rated workman to seek regularization after completion 240 days service. The drivers and conductors, who are the members of the Union, have not been appointed by any contractor, on the other hand, they have been appointed through a separate and special contract and hence, the provisions of Contract Labour (regulation and abolition) Act, 1948 would not applicable to them. The petitioner Union has wrongly invoked the provisions of Minimum Wages Act, 1948 and the Motor Transport Workers Act, 1961, which have no bearing in the claim made by this petitioners. According to the principles of Labour Law, engagement of certain types of employees by special contract for a specific period, for engagement of work under a new scheme, under the special project, depending up on the needs of the employer are permissible and those employees cannot be treated on par with other regular employees and

they cannot seek regularization by comparing themselves with a different set of employees recruited in accordance with the Recruitment Rules. Since, the petitioners, under the Trade Union, are so appointed their claim has to be dismissed and hence, the respondent prayed to dismiss the claim.

4. On the side of the petitioner only witness was examined and Ex.P1 to Ex.P13 was marked. On the side of the respondent only one witness was examined as RW1 and Ex.R1 was marked through cross-examination of PW1.

5. The petitioner side Counsel filed the written argument and filed additional written argument. It is stated in the written argument that the respondent recruited the workman as drivers and conductors under the cover of contract, in violation of Recruitment Rules which permits the appointment to be carried on as daily rated wages, which enables them to absorb as regular employee. It is further argued in the written argument that the recruitment was in violation of section 7, 10 and 12 of CLRA 1948. It is further argued that the appointment was violation of Recruitment Rules as they are having full educational and technical qualification for the said post. It is further stated in the written argument that the respondent has adopted a completely new mode of recruitment which is illegal and unjustifiable and it amounts to unfair labour practice. It is further stated in the written argument that the respondent cannot enter into one to one agreement with the employee directly and it is against the Recruitment Rules and other provisions of Labour Laws and therefore, the petitioner prayed to convert them as daily rated employees to enable them to absorb as regular employee. It is further stated in the written argument that void contract was entered at the time of recruitment willfully by the respondent/corporation and as the recruitment and contract is illegal and void, they have to be converted as daily rated employees as per the Recruitment Rules of the respondent/corporation and prayed to allow the claim of these petitioners. It is further stated in the written argument that as per the Ex.P12 one Thiru P. Ravi, who was appointed on contract basis, has been converted into daily rated employee and thereafter, he has been regularized, therefore, the same sort of benefit has to be offered to these petitioners. It is further stated in the written argument that as per Ex.P13, the voucher paid casual employee, have been converted into daily rated workman and then regularized and the same kind of benefit has to be given to these petitioners. It is stated in the written argument that the regularization were made after the framing of Recruitment Rules in 2006 as amended in 2008. It is stated, in the written argument that RW1 has given contradict version by admitting Ex.P13 series in which the regularization was made on 16-08-2010 which is well subsequent to the amended Recruitment Rules, 2008. It is further stated that these petitioners are performing all kinds of work like that of regular drivers and conductors and therefore, they are entitle for regularization. It is further stated in the written argument that, the reply by the respondent/ corporation, that it was unable to consider the request made by these petitioners as it is against the law is nothing but an evasive reply to deny the regularization of these petitioner and hence, necessary orders has to be passed direct the respondent to convert these petitioners as daily rated employees to enable them to get all the benefits of the regular employees.

6. The respondent side Counsel argued that these petitioners were appointed in a manner known to law and not in illegal manner. It is further argued that for a special purpose, special schemes and in necessary circumstances, the respondent/corporation has power to recruit the employees on contract basis and under Special Contract Act and it is not a violation of Recruitment Rules and Labour legislation. It is argued that these petitioners were recruited on contract basis and therefore, they cannot claim conversion for the purpose of regularization and this Court is not having power to order for such regularization. It is further argued that there is no existence of vacancy in the corporation and therefore, their prayer cannot be consider for a while. It is further argued that these petitioners cannot be converted and regularized in violation of terms of contract and these petitioners are bound by the terms and conditions of contract and therefore, their claim has to be dismissed. Furthermore, the respondent side Counsel produced the following citations

2016 (1) SCC 521

2018 (17) SCC 762

2018 (17) SCC 808

2019 (5) SCC 773

2019 (8) SCC 294

In fine, he prayed to dismiss the claim made by these petitioners.

7. *Points for consideration:*

Whether the dispute raised by PRTC Uzhiyargal Sangam, Puducherry, against the management of M/s. Puducherry Road Transport Corporation Ltd., Puducherry, over abolition of contract system of employment for running staff of the bus and their conversion as daily waged employees is justified or not?

8. *On the Point:*

The petitioner side witness by name Velayan examined himself as PWI and he has deposed that the petitioners were recruited against the existing Recruitment Rules and they were appointed through one to one agreement illegally, which is prohibited under law and it was adopted by the respondent/ corporation with an intention to deny their regularization. It is further deposed that they are having full educational and technical qualifications and performed their duties, like that of regular drivers and conductors from 18-09-2015 and 19-10-2015, in two batches and rendering unblemished service to the corporation and to the public and they have to be converted as daily rated employees to enable them to absorb as regular employees. It is further deposed that for the illegal act of commission of appointment of these petitioners by contract was purely carried out by respondent and therefore, they cannot be punished by non-conversion into daily rated wages. It is further deposed that their appointment through the mode of contract has to be set aside and they have to be converted as daily rated employees.

9. *Per contra*, RWL has deposed that the corporation is empowered to recruit the drivers and conductors under the contract employment under special contract Act, whenever necessity arises under any special scheme or project, *etc*. He further deposed that the recruitment of these petitioners as drivers and conductors are not illegal as alleged in the petition and these petitioners cannot claim anything beyond the terms of contract. It is further deposed that these petitioners were recruited for a period of 11 months on consolidated wages and the break was also given as part of routine procedure in their contract employment itself. It is further deposed that the drivers and conductors are governed by the terms and conditions of their contract of employment and there is no provision for converting them as daily waged employees.

10. PWl has pleaded and deposed that in violation of Recruitment Rules, they were recruited as drivers and conductors. It is further pleaded and deposed that the respondent has adopted a novel method of appointment through one to one contract which is against the Recruitment Rules. As per the evidence of PW1 and as per the pleadings of these petitioners the Recruitment Rules were framed during the year 2006 and amended during the year 2008. If, at all this part of evidence is true then the petitioners must produce the Recruitment Rules of 2006 and amended Recruitment Rules of 2008 before this Court and they must elucidate how the appointment was made in violation of the abovesaid Recruitment Rules, but, they have not produced any such Recruitment Rules of 2006 and amended Recruitment Rules of 2008. The petitioners have produced Ex.P1 and P2 and alleged it as the document of Recruitment Rules. But, on perusal of Ex.P1 and P2, it seems that Ex.P1 and P2 contains some details only and it has not contain the details of Recruitment Rules of appointment. Therefore, Ex.P1 and P2, this Court was unable to come to the conclusion that Recruitment Rules were violated by this respondent.

11. At the same time, RW1 has deposed that these petitioners were appointed drivers and conductors on the basis of contract for 11 months on consolidated wages and he has further deposed that they cannot be converted into daily rated employees and they cannot go against the terms of contract and they cannot claim anything in violation of terms and conditions of the contract of employment. To substantiate this part of evidence Ex.R1 has been marked by the respondent through the cross-examination of PW1. In Ex.R1, terms of conditions of contract employment, the position and period of employment has been stated in clause 1 as follows:

"The Employer hereby offers the employment to the Employee as driver and the Employee hereby accepts the offer to serve in such capacity, for the period of Eleven Months from the Date of the Execution of this Agreement and also the employment is subject to the conditions mentioned in the paragraph No. 9 below (Amendment and Termination)".

12. Thus, it is seen from the abovesaid terms and conditions that these petitioners were recruited for eleven months only on consolidated wages on contract basis only. Furthermore, as per clause No. 10, the employee, agreed that he will not claim any regular appointment in the corporation during or after the contractual period. It shows that these petitioners themselves consented to relieve their claim of regular appointment. So, as per the terms of contract these petitioners cannot claim regularization. Furthermore, in the terms and conditions of the contract, nowhere it is stated that they can be converted into daily rated employees. Therefore, as per Ex.R1 their claim cannot be granted and they cannot be converted into daily rated employees. In support of this, the respondent side Counsel has filed a citation reported in 2019 (6) SCC 250, wherein, the conductor who was recruited on contractual basis, who was terminated from service, has challenged his termination. In the abovesaid case, the Hon'ble Supreme Court has held that the terms of appointment indicates that the respondent was on a purely contractual appointment and that the service could be dispensedwith without notice at any stage and further

it has held that the termination is correct. Here, in this case also these petitioners are recruited on contractual basis hence, they cannot claim anything more than that of the terms of contract.

13. At this juncture, this Court inclined to go through the citations produced on the side of the respondent. In the citation reported in 2016 (1) SCC 521, the 9th, 13th and 16th paragraphs runs as follows:

> "In the present case, the Finance Officer in the University engaged the respondents as daily wagers for his Central Accounts Section. Admittedly, the respondents were not engaged by following due procedure and their engagement was not against any sanctioned posts. In order to curb the illegal practice of engaging daily wagers, Vice-Chancellor of the University issued order, dated 03-08-1990 clarifying that the daily wagers will not be allowed continue after 31-12-1990 until prior written approval is accorded by the Vice-Chancellor. No such approval was taken qua the respondents for their continuance. The respondents were terminated with effect from 01-01-1991. When the respondents' appointments were illegal, the respondents would not be entitled any right to be regularized or absorbed".
>
> "In Umadevi case, this Court settled the principle that no casual workers should be regularized by the Courts or the State Government and as per constitutional provisions all the citizens of this country have right to contest for the employment and temporary or casual workers have no right to seek for regularization. In para 47, this Court held as under: (SCC p.39)".
>
> "When a person enters a temporary employment or gets engagement as a contractual or casual workers and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such, a person cannot invoke the theory or legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State, has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post".
>
> "In Umadevi case, this Court held that the Courts are not expected to issue any direction for absorption/ regularization or permanent continuance of temporary, contractual, casual, daily wage or *ad hoc* employees. This Court held that such directions issued could not be said to be inconsistent with the constitutional scheme of public employment. This Court held that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if, the original appointment was not made by following a due process of selection as envisaged by the relevant rules. In view of the law laid down by this Court, the directions sought for by the appellants cannot be granted."

14. As per the abovesaid citations the workman who was not engaged by following due procedure and not against sanctioned post can be terminated. Further, it is held in the abovesaid citation even, the daily rated employees service can also be terminated at the instance of the employer. Furthermore, as per Umadevi (3) case,

> "when a person enters into employment are gets employment as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedures, he is aware of the consequences of the appointment being temporary, casual or contractual in nature, such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post would be made only by following a proper procedure for selection and in cases concerned, in consultation with Public Service Commission". Thus, as per the abovesaid citation these petitioners being contractual employees cannot be regularize or converted into daily wages employees. Further, the respondent side Counsel produced another citation reported in 2018 (17) SCC 762, wherein, it is held that invalid appointment/ illegal appointment/wrong appointment without following due process can be terminated. Wherein, 2 to 6 paragraphs runs as follows:
>
> "For the sake of convenience, we are taking the facts from CA No. 9891 of 2010. The appellant Arbind Kumar was appointed as a Constable in Dhanbad District on 31-03-1998. There is no dispute that the provisions in the Police Manual for such appointment were not followed and without inviting applications from the eligible persons, the appellant's case for appointment allegedly recommended by the Superintendent of Police, Dhanbad to the Inspector General-*cum*-Inspector General of Police (Welfare)

Bihar, Patna (DG- DIG, on the ground that father of the appellant was an Assistant Sub-Inspector of Police and had met with an accident on 02-08-1997 and sustained injuries leading to amputation of right leg. It is not in dispute that father of the appellant continued to serve the Police force till he superannuated sometime 2005.

"So far as the two appellants in the other appeal *i.e.*, CA No. 9892 of 2010, concerned, they claim to be bra've persons who helped the Police against Naxalites and as a result, both of them were recommended for appointment of the then Superintendent of Police, Dhanbad to the DG-c*um*-IG, Bihar, Patna after their cases were cleared by the DG-*cum*-IG, they were appointed as Constables on 16-10-1996."

"The appellants underwent training and began working as Constables. Even the fact of such appointments made without adhering to the provisions of the Police Manual came to light, the Home Secretary, Government of Bihar issued a Communication in September 2000 to issue notice to persons appointed in such manner against law and to cancel such appointments if, they are so found. As a result of such exercise, the service of the appellants came to be terminated in 2002 and 2003. The termination was done after serving show-cause notice on the simple ground that the appointments were made through a process unknown to law and in total disregard of the relevant provisions in the office manual. Some controversy was raised as to whether show-cause notice was served on the appellant Arbind Kumar but, it has been pointed out that his show cause as well as the notice is annexed as Annexure P-6."

"On behalf of Arbind Kumar, reliance has been placed on a judgment this Court in Arun Kumar Rout *v.* State of Bihar, whereby this Court in the peculiar facts of that case directed for framing a scheme for absorption/regularization of the appointees who were working as temporary or *ad hoc* for long number of years. The judgment itself makes it clear that the order was based under Article 142 of the Constitution of India with a specific observation that it shall not be treated as a precedent. Hence, we are not persuaded to follow that course of action in the present case. Although the appellants have pleaded that they are mere victims of irregular or illegal action by the Police officials the beneficiaries cannot blame the appointing authority alone and claim that the illegal appointment should be continued in perpetuity. To accept such plea would amount to giving premium to dishonest and illegal acts in matters of public appointments."

"The appellants were terminated as soon as the authorities came to know of such illegal appointments. They had not completed even ten years so as to perhaps raise a claim for one-time consideration for regularization in terms of the judgment of the Constitution Bench in State of Karnataka *v.* Umadevi (3). In the facts of the case, we find no merit in these appeals, they are accordingly dismissed. There shall be no order as to costs."

15. As per the abovesaid paragraphs the appointment made in violation of RRs can be terminated. Here, in this case also admittedly, these petitioners were recruited in violation of Recruitment Rules of 2006 and amended Recruitment Rules of 2008. Therefore, if, we apply the abovesaid principles rendered by the Hon'ble SC in this case the claim made by these petitioners cannot be answered in positive. Furthermore, the respondent side Counsel filed another citation reported in 2018 (17) SCO 808 wherein, the Hon'ble SC has held that "respondent/ petitioner, not a daily wage earner but, contractual employee and working for one and half months cannot be consider for regularization. Further, paragraphs 1 to 3 runs as follows:

"Leave granted. We have heard the learned Counsel for the parties.

"We have considered Government Order No. 355-GAD of 1996, dated 30-04-1996 under which the claim for regularization was made by the Respondent-writ petitioner. We have also considered the order of the High Court, dated 28-02-2000 passed in Anand Gopal Mishra *v.* State of J & K directing the consideration of the claim of the respondent-writ petitioner and the order of the State Government, dated 06-01-2001 rejecting the claim of the respondent-writ petitioner."

"Having read and considered the above materials on record we are of the view that the High Court was not justified in directing regularization of the respondent-writ petitioner who was not a daily wage earner and was employed contract basis and had, in fact, worked for a period of one and half months only."

16. Here, in this case also these petitioners were recruited on contractual basis during the year 2015. Therefore, even as per the abovesaid citation also the claim made by these petitioners also cannot be considered in positive in their favour. Further more, the respondent side Counsel filed another citation reported in 2019 (5) SCC 773, wherein, paragraphs 1, 5 and 13 runs as follows:

"Leave granted. This appeal is filed against the final judgment and order, dated 05-12-2016 passed by the High Court of Uttarakhand at Nainital in Union of India *v.* All India Trade Union Congress whereby the High Court dismissed the appeal filed by the appellants herein and issued directions to them in the nature of mandamus by framing a scheme itself for its implementation to regularize the services of the casual paid labourers and granted them, the benefits similar to those of the regular employees under all the Labour Laws."

"Respondent Trade Unions filed a Writ Petition in the High Court of Uttarakhand at Nainital against the appellants claiming a relief for regularization of the casual workers, who according to the respondents (writ petitioners) were working for a considerable long period in one project undertaken by BRO in the State of Uttarakhand for construction of roads for going to pilgrimage of Char Dham Yatra. It was the case of the writ petitioners that these workers though working for number of years for the Union of India and rendering their services, but, they were neither being regularized in the Government set-up as a Government Employee and nor were being paid regular/temporary/perks/facilities which were being paid to Government Employees and they were being provided with any protection which was available to Government employee. In substance and in effect, the respondents (writ-petitioners) claimed that all the casual workers, who were working in the project question, should be regularized in Government Service."

"That was also a case where the Union of workers, namely, "Vartak Labour Union" had claimed a relief of regularization of the services of the casual workers who were working in BRO for a considerable period in construction activities undertaken by BRO in the State of Assam. The Union workers, therefore, filed a Writ Petition against the Union of India in the Gauhati High Court. The High Court allowed the Writ Petition and directed the Union of India to regularize the services of all such casual workers. The Union of India felt aggrieved and filed Special Leave to appeal in this Court against judgment of the Gauhati High Court. This Court allowed the appeal and set aside the order of the Gauhati High Court with the following observations;

"We are of the opinion that the respondent Union's claim for regularization of its members merely because they have been working for BRO for a considerable period of time cannot be granted in light of several decisions of this Court, wherein, it has been consistently held that casual employment terminates when the same is discontinued and merely because a temporary or casual worker has been engage beyond the period of his employment, he would not be entitled to be absorbed in regular service or made permanent, if the original appointment was not in terms of the process envisaged by the relevant rules."

"Therefore, in the facts and circumstances of the instant case, where members of the respondent Union have been employed in terms of the Regulations and have been consistently engaged in service for the past thirty to forty years, of course with short breaks, we feel, the Union of India would consider enacting an appropriate regulation/scheme for absorption and regularization of the services of the casual workers engaged by Bro for execution of its ongoing projects."

"In the final analysis, the appeals are allowed and the impugned judgments and orders are set aside. However, in the circumstances of the case, the parties are left to bear their own costs."

"In the light of the foregoing discussion, we are unable to agree with the reasoning and the conclusion arrived at by the High Court in the impugned order. As a consequence, the appeal succeeds and is accordingly allowed. The impugned order is set aside and as a result thereof, the Writ Petition filed by the respondents is dismissed."

17. As per the abovesaid citation even if, the casual workman worked for more than considerable period of time their causal employment terminates when the same is discontinued. Furthermore, it is held that merely because a temporary or casual worker has been engaged beyond the period of his employment, he would not be entitled to be absorbed in regular service or made permanent, if, the original appointment not in terms of the process envisaged by the relevant rules. Here, in this case also these petitioners were not recruited as per the service rules. Furthermore, they cannot go beyond the terms of contract of employment even as per the abovesaid citation also. Hence, the claim made by the petitioners cannot be granted in the light of the abovesaid citation. Furthermore, the respondent side Counsel produced another citation reported in 2019 (8) SCC 294 wherein, para 15 and 17 runs as follows:

"We have heard the learned Counsel for the parties and find that the orders passed by the Tribunal, as affirmed by the High Court are not justified in law."

"We find, the selection of the candidates for training was not by way of transparent procedure nor there was any commitment to appoint candidates who have completed training as Gardeners, therefore, even if, a candidate has completed training, he cannot seek right of employment unless such posts are advertised and filled up by giving opportunity to all similarly situated candidates. The directions of the Tribunal, as if firmed by the High Court, that the candidates are intended to be employed are wholly unjustified, as there cannot be any direction for appointment only for the reason that the candidates have undergone training. It is not necessary for this Court to examine whether the post of Gardener has been upgraded to the post of Horticulture Extension Worker or that it is the same post having a different nomenclature. The fact remains that all public posts are required to be filled up by giving an opportunity to all the candidates to apply and to compete for the post."

18. As per the abovesaid citation if, the appointment was made dehors any selection procedure known for making employment against the public post, therefore, such appointment cannot be said to be protected by Article 3(11) of Civil Service Rules. Here, in this case also the petitioner himself admitted that their recruitment was in dehors of the Recruitment Rules of the corporation, hence, in such a circumstances the claim made by the petitioners cannot be answered in positive in their favor.

19. Thus, on analyzing the document Ex.R1 and the oral evidence of the petitioner and the respondent it is found that these petitioners were recruited on contractual basis for a period of 11 months on consolidated wages and there is no clause for conversion of contractual employees into daily wages employees, this Court cannot grant the relief sought for by these petitioners.

20. In the result, the industrial dispute raised by the petitioner against the respondent over the abolition of contract system of employment for running the staff of the bus and their conversion as daily waged employees is decided as unjustified and hence, this Industrial Dispute is dismissed. No cost.

Dictated to Stenographer, transcribed by him, corrected and pronounced by me in the open Court on this the 19th day of February, 2020.

V. PANDIARAJ,
Presiding Officer,
Industrial Tribunal-*cum*-
Labour Court, Puducherry.

List of petitioner's witness:

PW.1 — 13-03-2019 Velayan

List of petitioner's exhibits:

Ex.P1	—	Copy of recruitment rules for the post of conductor.
Ex.P2	—	Copy of recruitment rules for the post of driver.
Ex.P3	— 23-07-2016	Copy of letter submitted by the petitioner Union to the respondent management.
Ex.P4	— 16-02-2017	Copy of letter submitted by the petitioner Union to the respondent management.
Ex.P5	— 13-03-2017	Copy of industrial dispute raised by petitioner Union.
Ex.P6	— 05-06-2017	Copy of the reply by the respondent management.
Ex.P7	— 19-06-2017	Copy of the rejoinder filed by the petitioner Union.
Ex.P8	— 15-09-2017	Copy of the additional reply by the respondent management.
Ex.P9	— 10-11-2017	Copy of the conciliation failure report.
Ex.P10	— 29-11-2017	Copy of the Government Order in G.O. Rt. No. l83/A/C/Lab./T/2017.
Ex.P11	— 19-12-2017	Copy of the Gazette of Puducherry No. 51, Page. 1381.
Ex.P12	— 14-06-1995	Copy of Office Order of the P. Ravi.
Ex.P13	— 16-08-2010	Copy of Confirmation Order of the Baskar.

List of respondents exhibit's:

Ex.R1	— 03-08-2016	Copy of contract of the employment between respondent/management and Tamilselvan for the post of driver.

V. PANDIARAJ,
Presiding Officer,
Industrial Tribunal-*cum*-
Labour Court, Puducherry.